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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In Re Application of)

Kucherlapati, et al.)

Serial No: 08/112,848)

Filing Date: 27 August 1993)

Title: GENERATION OF XENOGENEIC)
ANTIBODIES)

Group Art Unit: 1804

Examiner: S. Ziska

AMENDMENT UNDER 37 CFR 1.116 AND
REQUEST FOR WITHDRAWAL OF FINALITY OF REJECTION

Box AF
Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This paper responds to the Examiner's action mailed 29 March 1995, time for response to which was set to expire 29 June 1995. A petition for extension of time of one (1) month until 31 July 1995 (29 July 1995 = Saturday) is attached along with the required fee. A Notice of Appeal also is being filed with this Amendment. Entry of these amendments respectfully is requested as this will moot several rejections and simplify issues for appeal.

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Applicants also respectfully request withdrawal of the finality of the rejection. The Examiner's Action refused to enter Amendments to claims 5-7 and 9 because they failed to recite the word "Amended" following the claim number, even though the format of the additions and deletions to the claim language was otherwise appropriate. Claim 1 also lacked the word "Amended" following the claim number, but this claim was entered and considered by the Examiner. While an Examiner has the discretion to enter or reject amendments that do not conform to the requirements, respectfully, it is arbitrary and inappropriate for some defective claims to be entered and not the others. Since Applicants' intentions were clear (at least as to claim 1), a phone call to Applicants' counsel would expeditiously have lead to the submission of claims appropriately configured. It is unfair to Applicants to have missed a round of substantive examination as to the subject matter of amended claims 5-7 and 9 under these circumstances. Amendments in proper format to these claims that were not previously entered are submitted again below.

Applicants also respectfully request withdrawal of the finality of rejection for a second reason. Claim 12 was said to add a new limitation of "immunoglobulin DNA" to the subject matter of claim 5, thereby necessitating a new and final ground for rejection. Respectfully, original claim 5, at page 78, lines 28-29 did in fact require "immunoglobulin DNA". The Amendment adding claim 12 was made in response to the previous rejection of claim 5, but this amendment did not add new limitations to the claim as indicated by the Examiner's Action.